IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Smt. Gomti & ors. Versus Smt. Gora & Anr.

S.B. Criminal Misc. Petition No. 572/2002

...

Smt. Gomti & ors. Versus Smt. Gora & Anr.

S.B. Criminal Misc. Petition No. 573/2002

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Smt. Gomti & ors. Versus Smt. Gora & Anr.

S.B. Criminal Misc. Petition No. 574/2002

and

Smt. Gomti & ors. Versus Smt. Gora & Anr.

S.B. Criminal Misc. Petition No. 575/2002

...

Date of Order: December 04, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Pradeep Shah, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. J.R. Beniwal, for the non-petitioner No.1 Smt. Gora.

BY THE COURT:

These four criminal miscellaneous petitions under Section 482 of the Code of Criminal Procedure, 1973 (for short,

"the Code" hereinafter) are directed against the order dated 20.5.2002 passed by the Additional Sessions Judge No.1, Sri Ganganagar (for short, "the Revisional Court" hereinafter).

The facts and circumstances giving rise to these petitions, as appear from the order of the Judicial Magistrate No.1, Sri Ganganagar (for short, "the trial Court" hereinafter) dated 14-3-2000, are that monthly allowance of maintenance was granted in favour of non-petitioner No.1 Smt. Gora and against her husband Lekh Ram. On execution proceedings for realizing the arrears of maintenance, an application under Section 125 (3) of the Code was filed against Lekh Ram, however, prior to filing of the application under Section 125 (3) of the Code, Lekh Ram expired and, therefore, the proceedings were initiated against a dead person and it was objected that the proceedings have been initiated against a dead person. The trial Court rejected the contention of the petitioners and issued warrant levying the amount of arrears of maintenance under Section 421 of the Code and issued warrant of attachment to the District Collector, Sri Ganganagar.

Section 421 of the Code provides that when an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may (a) issue a warrant for the levy of the amount by attachment and sale of

any movable property belonging to the offender, (b) issue a warrant to the Collector of the district, authorizing him to realize the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter, provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under Section 357 of the Code.

The trial Court issued the warrant of attachment to the District Collector, Sri Ganganagar directing therein that after the death of Lekh Ram, the property vests in Gomti W/o Lekh Ram, Om Prakash, Hajari Ram and Balram, the sons of Lekh Ram, be attached and arrears of maintenance be realized in the manner of recovery of land revenue. That order came to be challenged by the present petitioners before the Revisional Court. The Revisional Court, vide impugned order, dismissed the revision petition. Hence these criminal miscellaneous petitions.

Learned counsel for the non-petitioner No. 1 submits that non-petitioner No.1 Smt. Gora, in whose favour the order of maintenance was passed by the trial Court has expired and there is no one to substitute her in the proceedings.

In view of the statement of Mr. J.R. Beniwal, learned counsel for the non-petitioner No.1 that non-petitioner No.1 Smt. Gora has expired and there is no one to be substituted in her place to continue the proceedings and collect the arrears of maintenance, the petitions are dismissed.

(H.R. PANWAR), J.

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